

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance

(916) 322-5662

Administration

322-5660

Executive/Legal

322-5901

Enforcement

322-6441

July 17, 1984

Eric Lauterer  
City Attorney  
11391 Acacia Parkway  
Garden Grove, CA 92640

Re: Your Request for Advice, Our Advice  
No. A-84-128

Dear Mr. Lauterer:

Thank you for your request for advice on behalf of Councilmember Tilman Williams and the City Council concerning the conflict of interest provisions of the Political Reform Act.<sup>1/</sup> Your questions involve the adoption of a Specific Plan for the Harbor Corridor area of the City of Garden Grove and Mr. Williams' interests in businesses and real property in that area.

### SUMMARY OF CONCLUSIONS

1. Financial disclosure: Mr. Williams must report all of his interests in real property in the City, all sources of income to him which reside or do business in the City, and all investments in business entities which do business or plan to do business in the jurisdiction. He must report the name of each source of income to his businesses if the gross receipts from that source exceeded \$10,000 during the reporting period.

2. Disqualification: Mr. Williams must disqualify himself from City Council decisions which relate to the adoption of a Specific Plan for the Harbor Corridor area.

---

<sup>1/</sup> Government Code Sections 81000-91014. All statutory references made are to the Government Code, unless otherwise noted.

## FACTS

### 1. The Planning Process

The City of Garden Grove ("City") is a residential community in Orange County with approximately 126,000 residents. Recently, the City has begun efforts to improve certain commercial areas in the community. In April 1982, the City Council adopted a Community Economic Development Strategy which is an overall community and economic development plan for the City. In April 1983, the City Council and Planning Commission held a joint study session on general plan/zoning inconsistencies and future planning efforts for the City. As a result of that meeting, the City Council in May 1983, directed city planning staff to begin implementation of the Community Economic Development Strategy through the preparation of specific plans for the three primary planning nodes (planning areas); Harbor Corridor, Brookhurst/Chapman and Community Center. The Council wanted the Harbor Corridor Specific Plan to be prepared first since there were development projects pending in the area.

In October 1983, a consultant (the Planning Center) was selected to prepare the Harbor Corridor Specific Plan ("Specific Plan"). There are approximately 225 parcels of land within the entire study area which range from very small to very large in size. The consultant for the Specific Plan divided the study area for the Harbor Corridor into six planning districts based on similarity of proposed uses in each district and on an analysis of the opportunities and constraints that currently exist within the area. The proposed uses for each planning district are only tentative at this time as further analysis and community input will be necessary prior to the consultant's making the final recommendation.

In May 1984, the consultant recommended to the City Council that the study area be modified to include certain areas (adjacent to) the present study area, and the City Council accepted this recommendation. One development project in the area -- the Harbor-Buaro shopping center -- is already winding its way through the City's Redevelopment Agency. This project, which involves the revitalization and upgrading of an existing shopping center, is consistent with the early progress on the Specific Plan. Recently the City Council also approved the construction of a major hotel and business complex at the northwest corner of the intersection of Harbor Boulevard and Chapman Avenue as a Redevelopment project.

At the present time, neither the consultant on the Specific Plan nor the City Council has selected a plan for the Harbor Corridor development. In addition, The City Council has not yet determined

whether it will accept the idea of dividing the area into six planning districts.

## 2. The Harbor Corridor Area

Harbor Boulevard is a major commercial axis for the City. It connects directly with the Garden Grove, San Diego and Golden State Freeways. It serves major tourist, convention and sports facilities in Anaheim to the north, and major employment centers to the south. The Harbor Corridor node or planning area runs along Harbor Boulevard from the Garden Grove Freeway on the south to just above Chapman Avenue on the north. It includes the major intersections of Harbor Boulevard with Garden Grove Boulevard and Chapman Avenue. Harbor Boulevard has always been a commercial street. According to the Request for Proposal for Harbor Corridor Specific Plan dated July 27, 1983 (Attachment 2 to Councilmember Raymond Littrell's Questions), the development problems within the Harbor Corridor area include:

1. A vacant parcel at the northwest corner of Harbor and Chapman that was formerly a landfill site.<sup>2/</sup>
2. Strip commercial development that is over 25 years old with poor lot layout and in general disrepair.
3. Use of residential structures for commercial uses.
4. Inadequate or inefficient parking.
5. Problems with the development of the Harbor/Buaro shopping center.
6. Need for consolidation of small parcels into sizes large enough for quality development to occur.
7. Numerous vacancies in commercial buildings and rapid turnover of tenants.

## 3. Mr. Williams' Financial Interests

Councilmember Tilman Williams is a real estate broker and insurance agent in the City. He owns four parcels of real property

---

<sup>2/</sup> Since the Request for Proposal was drafted, the City/Redevelopment Agency entered into a Disposition and Development/Owner Participation Agreement with Cove Development Company, Inc. for the sale and redevelopment of this site for the construction of a 400-room quality hotel and a \$50,000 square foot office building with a connecting glass atrium.

-- two of which front on Harbor Boulevard, and two on Thackeray Street directly behind the Harbor Boulevard parcels, which are single family residences. The two parcels which front on Harbor Boulevard are improved with residences which have been converted into business offices. Mr. Williams conducts his real estate and insurance business out of these offices. The residences are used as rental properties. The present boundary lines for the Harbor Corridor study area and the Redevelopment Project Area run down the alley which separates Mr. Williams' four lots.

#### ANALYSIS

##### 1. Disclosure of Financial Interests.

You asked:

Does Councilman Williams have to disclose on FPFC forms, income from sales regarding real property in the Harbor Corridor and for what period of time?

As a city councilmember, Mr. Williams must disclose all of his investments, interests in real property, and sources of income. Section 87200, et seq. All of these terms are defined in the Act. See Sections 82030, 82033 and 82034. Since Mr. Williams owns his own realty and insurance business, he would have to disclose his investment in that business, the gross income he receives from the business, and the names of any sources of income of \$10,000 or more to that business. Section 87207.<sup>3/</sup> (Note that the disclosure threshold for sources of income to a business is \$10,000, but the disqualification threshold as discussed in more detail below is \$250.)

##### 2. Disqualification.

Section 87100 prohibits public officials from making, participating in making, or in any way attempting to use their official positions to influence a governmental decision in which they know or have reason to know they have a financial interest.

---

<sup>3/</sup> The definition of source of income is limited to those persons or entities who have done, are doing, or plan to do business in the official's jurisdiction. Section 82030. Buying and selling real property in the jurisdiction constitutes doing business there.

Financial interest is defined in Section 87103 as a reasonably foreseeable material financial effect of the decision on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000).

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Under the facts presented, Mr. Williams could have a conflict of interest with regard to City Council decisions on the Harbor Corridor and surrounding areas on at least three grounds. One, since he has interests in real property worth over \$1,000, he must refrain from participating in any Council decisions which could foreseeably have a material or significant financial effect on the fair market value or the income producing potential of his property. Two, since he has an investment in a business entity worth over \$1,000, he must not participate in any decisions that could materially affect the revenues or the current assets or liabilities of his business.

The third potential ground for disqualification involves the sources of income to Mr. Williams' realty and insurance business. As noted above, if he has received income aggregating \$250 or more from a person or business during the 12 months preceding a decision, that person or entity is a "source of income" to him within the meaning of Section 87103. Then if a Council decision could have a foreseeable, material financial effect on that person or entity, distinguishable from the effect on the person generally, he must not participate in that decision.

The general purpose of the Harbor Corridor planning process is to re-vitalize and upgrade the area. More specifically, the City wants to create better commercial opportunities, upgrade the retail facilities, and exploit the commercial development potential of the area. All of these plans are intended to improve the market value

Eric Lauterer  
July 17, 1984  
Page 6

and income producing potential of property and businesses in the area. This will have an extremely beneficial effect on most property and business owners. It could have a somewhat negative effect on some business owners in the area whose businesses are no longer deemed suitable. New regulations on the manner of development could also affect some property owners adversely whose property does not meet the new criteria. But in general, commercial property values should increase as a result of planning and new development.

Since Mr. Williams owns two parcels of commercial property, runs a realty and insurance business and probably has clients who do business in the area, it is probable that his interests will be affected by the Council decisions. The issues then are whether these effects will be material.<sup>4/</sup>

I have enclosed a copy of the Commission regulation on materiality which includes monetary guidelines. 2 Cal. Adm. Code Section 18702. Briefly stated, these guidelines are as follows. In the case of an effect on a business, the effect of a decision is considered material if the decision could increase or decrease the annualized gross revenues of the business by 1% or more. In the case of an effect on real property, the effect of a decision is considered material if the decision could increase or decrease the income producing potential of the property by 5% per month or the fair market value of the property by one-half of 1%.

These guidelines are often difficult to apply since the effect of a decision may not be easy to quantify. In these circumstances, looking at analogous situation in Commission opinions and advice letters is often helpful. In its Oglesby Opinion, the Commission addressed a situation similar to Mr. Williams'. Councilmember Mel Whatley of the City of Antioch owned three parcels of real properties within the Redevelopment Project Area.<sup>5/</sup> He also owned and

---

<sup>4/</sup> Commercial property owners and real estate agents do not constitute significant segments of the general public, so the "public generally" exception to disqualification does not apply.

<sup>5/</sup> The Harbor Corridor planning process is extremely similar to Redevelopment Agency project planning, and the analysis would be the same.

operated a real estate business in the Area. The Commission discussed and concluded the matter as follows:

The proposed redevelopment plan will have a foreseeable material financial effect on the Councilman's real estate business. Such a business earns its income from commissions normally based on a percentage of the value of property. When property value increases, the amount of the commission increases.

One of the major goals of a redevelopment plan is increasing property values, in particular within the project area and less directly within the entire community. In redeveloping the blighted areas of the community, all property becomes more valuable, particularly that which has been redeveloped. With regard to the specific plan under consideration in Antioch, the creation of a new civic center will undoubtedly increase the value of property located nearby. Improved freeway access will raise the value of the property in the vicinity of the new off-ramp. The widened highway presumably provides a benefit to surrounding property. Street improvements have an obvious and immediate impact on the property in the assessment area. Finally, the preparation of a plan for commercial and industrial sites will, to the extent it is successful, affect property values to various extents throughout the city.

All parts of the proposed plan before us will result in increased property values. That is the plan's contemplated and proper purpose. The eventual sale or lease transactions involving any properties within or outside the area will result in increased commissions, proportional to the increased values, to Mr. Whatley. There is also a likelihood that the increased attractions added to the downtown area and the upgrading of other neighborhoods by new access and street improvements will result in greater numbers of property transactions. Both these possibilities constitute a reasonably foreseeable material financial effect on Councilman Whatley's real estate business, since both the size and the number of commissions generated by real estate sales in the area are likely to increase. In addition, if the redevelopment plan is adopted, it is possible that Mr. Whatley's official position on the Redevelopment Agency would make available to him inside information which could result in a financial benefit to his real estate business. Even if he did not, as we presume he would not, use confidential information gained from his official activities for private business purposes, potential customers might believe he would be privy to such information and thus more effective as a real estate agent.

Eric Lauterer  
July 17, 1984  
Page 8

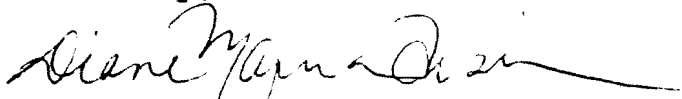
Without deciding whether these foreseeable effects on Mr. Whatley's real estate business would be sufficient by themselves to require disqualification, we believe they are sufficient when considered in conjunction with Mr. Whatley's ownership of several properties in or near the area. A general increase in property values in the area because of the project would have a direct and immediate effect on Mr. Whatley's ownership interest in these properties. We are of the opinion that the decision whether to adopt or reject the redevelopment plan is one that will, foreseeably, have a reasonably material financial effect, distinguishable from its effect on the public generally, on the business and real estate investment of Mr. Whatley, and therefore is a decision in which he may not participate.

[footnotes omitted]

We believe the facts in the Oglesby Opinion and Mr. Williams' situation to be sufficiently analogous to advise him that he should not participate in City Council decisions concerning the adoption of the Harbor Corridor Specific Plan. We understand that the Council will be making a series of policy and procedural decisions on the Harbor Corridor and the Plan prior to the actual adoption of the Plan. Mr. Williams should not participate in any of these decisions if it is foreseeable that they will affect the ultimate decision on the Plan.

Please contact me at (916) 322-5901 if I can be of further assistance.

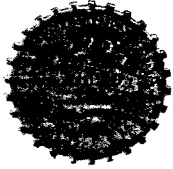
Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Maura Fishburn".

Diane Maura Fishburn  
Counsel, Legal Division

DMF:km





# CITY OF GARDEN GROVE, CALIFORNIA

11391 ACACIA PARKWAY, GARDEN GROVE, CALIFORNIA 92640

OFFICE OF THE CITY ATTORNEY  
(714) 638-6881

MAY 11 9 19 AM '84

May 14, 1984

Ms. Barbara Milman  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA. 95804

Dear Ms. Milman:

I am writing at the request of the City Council of the City of Garden Grove to obtain, where possible, an opinion relating to the attached material. The documentation submitted provides background in the area as to whether or not a conflict of interest potentially exists in connection with the action by Councilman Tilman Williams.

You will note from the documents that there are questions raised that I have prepared based on my understanding of the inquiry. Also attached, however, are questions raised by City Councilman Raymond Littrell concerning the same subject matter. The reason for the two separate inquiries being made on the same subject matter is a result of the City Council's request. The City Council has also indicated that if you need any further information, you may inquire of this office or contact Councilman Littrell directly at (714) 638-6676.

I am attaching background material relevant to the conflict of interest questions raised.

Respectfully,

ERIC LAUTERER  
City Attorney

EL:mes  
0616G